

APPEAL NO. 040054
FILED FEBRUARY 18, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 15, 2003. The hearing officer determined that the respondent/cross-appellant's (claimant) _____,¹ compensable injury does include anxiety and depression, and that the claimant did not have disability beginning April 29, 2003, and continuing through October 1, 2003. The appellant/cross-respondent (carrier) appealed the extent-of-injury determination on sufficiency of the evidence grounds. The claimant appealed the adverse disability determination. The carrier responded to the claimant's appeal, and urged affirmance of the disability determination. The claimant submitted an "Answer to the Carrier's Response to Request for Review," addressing disability again, but did not respond directly to the carrier's appeal on extent of injury.

DECISION

Affirmed as corrected.

The claimant attached numerous duplicates of the documents that were submitted as evidence, as well as other documents that were not submitted as evidence at the CCH. In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we will only consider the evidence admitted at the hearing. We will not generally consider evidence that was not submitted into the record and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the information which the claimant attached to her request for review and, consequently, we will not consider that information on appeal.

Whether the compensable injury extended to include anxiety and depression and whether the claimant had disability presented fact questions for the hearing officer to determine based on the evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). This is equally true

¹ Although the parties entered into a stipulation that "there was a prior [CCH] where it was decided that Claimant sustained a compensable injury on _____, and that decision has become final," the carrier attached to its request for review a copy of the decision and order from the prior CCH, as well as the Appeals Panel decision following that CCH, which both establish that the parties were in error concerning the date of injury. The correct date of injury in this case is _____, as found by the hearing officer in the prior CCH and affirmed in Texas Workers' Compensation Commission Appeal No. 030468, decided April 11, 2003. All references to the date of injury are changed to read "_____."

regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, the hearing officer determined that the claimant's anxiety and depression are included in her compensable injury. On appeal, the carrier essentially argues the same matters that were argued to the hearing officer at the hearing. We conclude that the hearing officer's extent-of-injury decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). There is likewise sufficient evidence to support the hearing officer's determination that the claimant did not prove that she had disability for the period in dispute at this CCH.

We affirm the decision and order of the hearing officer, as corrected.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge